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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/986,720	11/09/2001	Thierry Ponton	5725.0867	5885

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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
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WASHINGTON, DC 20001-4413

EXAMINER
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NICOLAS, FREDERICK C

ART UNIT	PAPER NUMBER
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3754

MAIL DATE	DELIVERY MODE
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02/06/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

### Application No.

09/986,720

### Applicant(s)

PONTON, THIERRY

### Examiner

Frederick C. Nicolas

### Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-91 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7 and 19-28 is/are allowed.
- 6) ☒ Claim(s) 8-18 and 29-91 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Reissue Applications***

***Preliminary Amendment***

1. The preliminary amendment filed on 11/9/2001 has been entered.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 18,30-91 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 18, "the second space, the transverse partition" in lines 14-17; claim 30 recites the limitation "the top; the axis" in lines 4,8-9; claim 43, recites the limitation "the top; the axis" in lines 6,11-12; claim 55, recites the limitation "the top; the axis" in lines 4,8-9; claim 70, recites the limitation "the axis" in lines 9-10; claim 78, recites the limitation "the top" in line 6; claim 83, recites the limitation "the top" in line 5; claim 84, recites the limitation "the top" in line 5; claim 86, recites the limitation "the top" in line 5; claim 87, recites the limitation "the top" in line 5; claim 90, recites the limitation "the top; the axis" in lines 5,11-12; claim 91, recites the limitation "the top, the axis" in lines 5,10-11. There is insufficient antecedent basis for this limitation in the claims.

***Drawings***

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed subject

matter in claims 8,28-30,43,55,70,90-91, "the axis of said container and in a direction such that the axis of said pump is farther from the product outlet than is the axis of said container" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 8,15,29-30,40-42,70-74,77 are rejected under 35 U.S.C. 102(b) as being anticipated by De Freitas 4,429,813.

De Freitas discloses a unit for packaging and dispensing liquid or semi-liquid product (col. 1, ll. 5-9), which comprises a container (6) forming a reservoir for the product, a wall (32) extending above and in fixed position with respect to the container, a pump (41,43) mounted to the top of the container, a product outlet element (15) held substantially immovably in position with respect to the wall and a conduit (19) forming a flexible connection between the pump and the outlet element, wherein the pump is offset relative to the axis of the container and in a direction such that the axis of the pump is farther from the product outlet element than is the axis of the container as seen in Figure 1.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 9,14,31,36 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Freitas 4,429,813 in view of Andris 5,238,156.

De Freitas has taught all the features of the claimed invention except that the outlet element nozzle comprises a nozzle for spraying and the flexible connection forms

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a bellows. Andris teaches the use of a dispensing nozzle (4) in the outlet element and the use of bellows (3) for flexibility. Using a dispensing nozzle in the spout of de Freitas would allow for varied discharge of the substance.

Therefore, it would have been obvious to one of an ordinary skill in the art to use the teaching of Andris in the system of De Freitas at the time the invention was made to allow for a nozzle as the outlet element.

Using a bellowed tube as the flexible member of de Freitas would still allow for movement of the actuating element without moving or changing the orientation of the outlet element.

It would have been obvious to one of an ordinary skill in the art to use the teaching of Andris in the system of de Freitas at the time the invention was made to allow for the flexible conduit to be of a bellowed design.

9. Claims 16,38 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Freitas 4,429,813 in view of Clements 5,693,278.

De Freitas has taught all the features of the claimed invention except that the body being a molded thermoplastic material of polypropylene or polyethylene terephthalate (PET)). Clements teaches the use of a PET as the material for a crack-proof and resilient article for containers such as cups. Using PET as the material for the body of de Freitas' design would allow for the body to serve as a reservoir.

Therefore, it would have been obvious to one of an ordinary skill in the art to use the teaching of Clements in the system of de Freitas at the time the invention

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was made to allow for PET as the material for the body. Further it is well known in the art to use this material for pump container bodies.

10. Claims 17,39,76 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Freitas 4,429,813 in view of Brattoli et al. 5,332,129.

De Freitas has taught all the features of the claimed invention except that the product being pharmaceutical, dermo-pharmaceutical, or cosmetic). Brattoli et al. teach that the product can be soap (a pharmaceutical product) or any alternative product. Any pharmaceutical, dermo-pharmaceutical, or cosmetic can be used in this dispenser.

It would have been obvious to one of an ordinary skill in the art to use the teaching of Brattoli et al in the system of de Freitas at the time the invention to allow for any pharmaceutical, dermo-pharmaceutical, or cosmetic product.

11. Claims 37,75 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Freitas 4,429,813.

De Freitas has taught all the features of the claimed invention except that the container and the wall are formed of a single piece.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the container and the wall of De Freitas to be formed of a single piece, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

***Allowable Subject Matter***

12. Claims 1-7,19-28 are allowed.

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13. Claims 18,43-69,78-91 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

14. Claims 10-13,32-35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Basile et al. 4,196,828, Marlon 3,967,760, Ponton 6,073,815, Trotta 3,958,726 and Malone 3,471,065 disclose other types of dispensing package.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver, can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should



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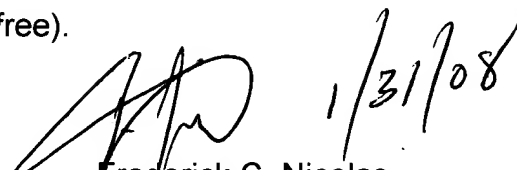
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Business Center (EBC) at 866-217-9197 (toll-free).

FN

January 31, 2008



Frederick C. Nicolas  
Primary Examiner  
Art Unit 3754